IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 17608 of 2006(U)

AGAINST THE ORDER IN I.A.4/2006 IN
CMA..1/2006 of SUB COURT, PAYYANNUR
O.S..307/2005 of MUNSIFF COURT, THALIPARAMBA
(I.A.1857/2005)

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PETITIONERS:

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1. BHARATI TELE VENTURES LTD., H-5/12,
KUTHAB AMBIENCE, MEHRAULLI ROAD, NEW DELHI-110 030
REPRESENTED BY ITS SENIOR MANAGER (LEGAL),
P.JAYABAL MENON.

2. MANAGER,
CIRCLE OFFICE, BHARATHI TELEVENTURES LTD.,
BHARATI TOWERS, S.A.ROAD, KADAVANTHRA, KOCHI-20.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENTS:

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1. KOMMACHIKALATHIL PATHUMMA, D/O.IBRAYAN,
PARIYARAM AMSOM DESOM, P.O. PARIYARAM,KANNUR DIST.

2. P.V. KRISHNAN, S/O. KELAPPAN KOMARAM,
KORAN PEEDIKA, PARIYARAM AMSOM, DESOM,
P.O. PARIYARAM, KANNUR DISTRICT.

BY ADV. SRI.PROMY KAPRAKKAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 17608 OF 2006

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT OS NO.307/05 FILED BY THE 1ST RESPONDENT BEFORE THE MUNSIFF'S COURT, TALIPARAMBA.

EXT.P2 : TRUE COPY OF THE IA NO.1857/05 IN OS NO.307/05 FILED BY THE 1ST RESPONDENT BEFORE THE MUNSIFF'S COURT, TALIPARAMBA.

EXT.P3 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN OS NO.307/05 BEFORE THE MUNSIFF'S COURT, TALIPARAMBA.

EXT.P4 : TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER IN IA NO.1857/05 IN OS NO.307/05 BEFORE THE MUNSIFF'S COURT, TALIPARAMBA.

EXT.P5 : TRUE COPY OF THE ORDER DT.09.11.05 IN IA NO.1857/05 IN OS NO.307/2005 OF THE MUNSIFF, TALIPARAMBA.

EXT.P6 : TRUE COPY OF THE CMA FILED BY THE PETITIONER BEFORE THE SUB COURT, PAYYANNUR.

EXT.P7 : TRUE COPY OF THE CERTIFIED OCPY OF THE ORDER IN IA NO.4/06 IN CMA NO.1/06 OF THE SUB OCURT, PAYYANNUR.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 17608 OF 2006

Dated this the 9th day of July, 2007

JUDGMENT

A mobile Telephone Company which was the defendant in a suit for injunction impugns in this Writ Petition Ext.P5 order of temporary injunction and Ext.P7 judgment of the lower appellate court confirming Ext.P5 by which an order of injunction is passed against the petitioner restraining the installation and energisation of a telecommunication tower. Mr.Sathish Ninan, learned counsel for the petitioner invited my attention to the judgment of the Division Bench in **Reliance Infocom Ltd. v. Chemanchery Grama Panchayat** [2006 (4) KLT 649] and submitted that the principal ground on which the injunction orders were issued and confirmed by the court below is that the installation and energisation of the tower will result in serious health hazards to the people of the locality. The said grant has to be turned down in view of the judgment of the Division Bench.

Having regard to the principles emerging from Reliance case it has to be observed that the basic premise on which the impugned orders were issued by the courts below was wrong. This court on admitting this Writ Petition granted the petitioner through an interim order, permission to install the tower, but however, energisation of the

tower was held up. In fact it is thereafter that the Division Bench pronounced its judgment in Reliance case. I set aside the impugned orders and direct the learned Munsiff to pass fresh orders, having due regard to the principles laid down by the Division Bench in Reliance Infocom's case. A fresh decision on the issue will be taken by the learned Munsiff at the earliest and at any rate within three weeks of receiving a copy of this judgment. In the meanwhile I permit the petitioner to activate the tower already installed subject to the fresh orders to be passed on the IAs. The IAs shall be disposed of within one month of receiving copy of this judgment. But it is clarified that the finding in the judgment of the lower appellate court regarding the lateral support, a finding in favour of the petitioner has not been set aside. Only the finding which are adverse to the petitioner have been set aside.

PIUS C. KURIAKOSE, JUDGE

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